

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11839 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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TAJMOHMAD KAMASHA RAFAI

Versus

STATE OF GUJARAT

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Appearance:

MR YATIN SONI for Petitioner

Mr.Uday Bhatt for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 07/12/2000

ORAL JUDGEMENT

#. The petitioner herein has challenged by way of this petition under Article 226 of the Constitution of India the order of detention passed against him by the Police Commissioner, Rajkot City, Rajkot on 20.7.2000 in

exercise of the powers conferred upon him under section 3(1) of the Gujarat Prevention of Anti -social Activities Act 1985 (PASA Act for short). The petitioner came to be detained from 22.7.2000 in pursuance of this order of detention.

#. The detaining authority, in the grounds supplied to the petitioner has referred to in all 5 crimes registered against him before Rajkot City Pradhumannagar Police Station under sections 66-B, 65-E and 81 of the Bombay Prohibition Act on 13.3.1989, 18.5.1989, 9.9.1989, 30.12.1989 and 10.7.2000. The detaining authority after taking into consideration the investigation made in the above said case came to the conclusion that the petitioner was bootlegger within the meaning of section 2(b) of the Bombay Prohibition Act. The detaining authority observed in the grounds that the petitioner was indulging in selling of illegal liquor and thereby causing harm to public health and was an obstruction to public order. The detaining authority also observed that there was no remedy except passing of the order under the PASA Act to prevent the illegal activities of the petitioner forthwith and hence the order of detention of the petitioner was passed.

#. Learned advocate Mr. Yatin Soni for the petitioner and Mr. Uday Bhatt learned AGP for the respondents were heard.

#. Among all the grounds which were advanced to challenge the order of detention, the ground of non application of mind in considering less drastic remedy available to the detaining authority was vehemently canvassed on behalf of the petitioner.

#. The factual aspect of this matter reveals that in all the above crimes which came to be registered from 13.3.1989 to 10.7.2000 the petitioner was on bail.

#. The detaining authority also referred in the grounds that even after releasing of bail, the petitioner was indulging in illegal activity detrimental to the public health and public order. The detaining authority further observed that the proceedings for cancellation of bail was likely to consume more time. Therefore, the same was not resorted to. Non application of mind by the detaining authority is obviously manifested in these observations. In Zubedabibi Rasidkhan Pathan vs. State of Gujarat reported in 1995(2) GLR 1134 the Division Bench of this Court ruled that non consideration of less drastic remedy available to the detaining authority like

cancellation of bail would amount to non application of mind qua the legal position by the detaining authority. Therefore, the detention order in that case came to be quashed. This view was again fortified by the Division Bench of this Court in LPA No.1056 of 1999 in the case of Yunusbhai Hasanbhai Ghanchi vs. District Magistrate decided on 15.9.1999. In this case instead of resorting to less drastic remedy of cancellation of bail, the detaining authority has merely brush aside this aspect by saying that the proceedings was like to consume more time. If we take the date of 13.3.1989 on which date the first offence was registered against the petitioner and he was released on bail and coupled with the statement of detaining authority in the grounds that after releasing the petitioner on bail he was indulging in illegal activities, then the fact clearly emerges that, firstly there was sufficient time by the detaining authority to resort to less drastic remedy of cancellation of bail. Instead that remedy has been conveniently overlooked by the detaining authority. In this view of the matter, the order of detention is vitiated by non application of mind by the detaining authority qua the legal position and the order of detention is vitiated and therefore, the order is required to be quashed to be set aside.

#. In view of the above observation the order of detention passed by the Police Commissioner, Rajkot City, Rajkot on 20.7.2000 against the petitioner under PASA Act is hereby ordered to be set aside and quashed. The petitioner Tajmohmad Kamalshah Rafai is ordered to be released forthwith if he is not required to be detained for any other purpose. Rule is made absolute. Direct service permitted.

(J.R.Vora.J)

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